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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,891	12/18/2001	Steven B. Rogers	30203/37573	5169

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EXAMINER
O'CONNOR, GERALD J

ART UNIT	PAPER NUMBER
3627	

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/024,891	Rogers et al.	
	Examiner	Art Unit	
	O'Connor	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *THREE* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *October 21, 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-50* is/are pending in the application.

4a) Of the above claim(s) *31-50* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *April 8, 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Preliminary Remarks

1. This Office action responds to the reply filed by applicant on October 21, 2005 in response to the previous Office action on the merits, mailed June 16, 2005.

Election/Restriction

2. Claims 31-50 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed March 28, 2005.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bugarin et al. (US 6,606,570).

Bugarin et al. disclose a method of analyzing a plurality of process control instruments adapted for use in a specific process control environment, comprising the steps of: receiving data

related to the specific process control environment, in which the plurality of process control instruments are to be used, via a computer device; and calculating performance characteristics for each of the plurality of the process control instruments simultaneously via the computer device, but Bugarin et al. do not explicitly disclose that the calculated performance characteristics are displayed. However, displaying calculations that a computer has performed is a well known, hence obvious, step to perform for those of ordinary skill in the art, and official notice to that effect is hereby taken. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Bugarin et al., if necessary, so as to display the calculations being performed by the computer device (as opposed to merely the results of the calculations--i.e., the list of flow meters deemed suitable for the specified application), in order to allow the customer to evaluate the performance characteristics of the various available meters with respect to the customer's own tolerances and other requirements to determine for themselves which models were suitable, rather than merely accepting/using the default tolerances and requirements of the flow meter manufacturer to determine which models would be acceptable/suitable, and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claim 2, the method of Bugarin et al. includes the step of calculating the performance characteristics for each of the plurality of process control instruments using the received data.

Regarding claim 3, the method of Bugarin et al. includes the step of retrieving, from a memory of the computer device, the performance characteristics for each of the plurality of process control instruments based on the received data.

Regarding claim 4, in the method of Bugarin et al., the computer device is a personal computer.

Regarding claim 5, in the method of Bugarin et al., the computer device is a web-enabled device.

Regarding claim 6, in the method of Bugarin et al., the plurality of process control instruments are each flow meters.

Regarding claim 7, in the method of Bugarin et al., at least one of the plurality of process control instruments is a Coriolis type of flow meter.

Regarding claims 8-12, in the method of Bugarin et al., each of the process control instruments is a Coriolis type of flow meter, not a vortex, magnetic, differential pressure, thermal mass, or ultrasonic type of flow meter. However, each of these types of meters is well known, hence, obvious type of flow meter to purchase, to those of ordinary skill in the art, and official notice to that effect is hereby taken. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Bugarin et al. so as to sell various types of flow meters, including any of vortex, magnetic, differential pressure, thermal mass, or ultrasonic types of flow meters, instead of selling only Coriolis types of flow meters, in order to increase sales by offering a greater selection of products, and since so doing

could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claim 13, in the method of Bugarin et al., the receiving step is performed by entering the data through a keyboard of the computer device.

Regarding claim 14, in the method of Bugarin et al., the receiving step is performed by downloading the data from a memory.

Regarding claim 15, in the method of Bugarin et al., the receiving step is performed by importing the data from a database.

Regarding claims 16-19 and 28, Bugarin et al. do not specifically disclose that the calculating step involves the step of calculating performance characteristics of each of the plurality of process control instruments over an entire range of operation of each process control instrument ("entire range" being construed as equivalent to "from a minimum to a maximum"). However, calculating performance characteristics over an entire range of operation, as opposed to merely a single point, displaying that range of results graphically, and providing comparisons between installed conditions and reference conditions, are all well known to those of ordinary skill in the art, and official notice to that effect is hereby taken. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Bugarin et al. so as to calculate performance characteristics over an entire range of operation, as opposed to merely a single point, display that range of results graphically, and provide comparisons between installed conditions and reference conditions, as is all well known to do, in order to ensure that the flow meter would operate properly in its intended application,

and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claim 20, in the method of Bugarin et al., the calculating step further includes the step of calculating the size of the process control instrument needed to satisfy the process control application.

Regarding claim 21, the method of Bugarin et al. includes the step of saving the received data in a memory of the computer device.

Regarding claim 22, the method of Bugarin et al. includes the step of assigning an electronic tag to the saved data to facilitate later retrieval.

Regarding claim 23, in the method of Bugarin et al., the receiving data step includes receiving a selection of the plurality of process control instruments to be used in the analysis.

Regarding claims 24 and 26, in the method of Bugarin et al., the process control instruments are each flow meters, and the calculating step includes both: the step of calculating flow meter accuracy as a continuous function of flow rate; and, the step of calculating fluid pressure losses for each of the flow meters.

Regarding claims 25, 27, 29, and 30, the recited functionality is not specifically disclosed by Bugarin et al. However, manually/conventionally performing the recited steps of calculating straight pipe requirements for each of the flow meters; calculating pressure loss due to pipe fittings; calculating installed costs associated with the plurality of process control instruments; and, depicting the pipe, pipe fittings, and flow meters graphically (as in an engineering drawing/layout/blueprint), are all well known, hence obvious, to those of ordinary skill in the art,

and official notice to that effect is hereby taken. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Bugarin et al. so as to adapt the computer device to perform the recited calculations and depictions that are otherwise well known to perform manually, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results, and since it has been held that simply providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Response to Arguments

5. Applicant's arguments filed Oct. 21, 2005 have been fully considered but are not persuasive.

6. Regarding the argument that the examiner has failed to provide a reference as evidence of what the examiner has found to be "well known" prior art, the argument has been disregarded as merely spurious, since challenging the existence of well known prior art by merely arguing that the fact is not supported by a reference, without stating for the record that the examiner is wrong or that applicant is without knowledge of the prior art teaching, does not constitute a proper traversal of the finding(s). Whereas any further traversal would no longer be seasonable, the object of the well known statement is therefore now taken to be admitted prior art. See MPEP § 2144.03.

7. To the extent that applicant is arguing that the references applied in the rejection fail to use the same names for certain elements as the names used by applicant, the argument is irrelevant, as it is noted that the disclosure in a reference must show the claimed elements arranged in the same manner as in the claims, but need not be in the identical words as used in the claims in order to be anticipatory. See *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Additionally, note that, during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. See *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to the disclosure.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is (571) 273-6787.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at (571) 272-6771.

Official replies to this Office action may be submitted by any ***one*** of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (571) 273-8300**. Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

December 29, 2005

12/29/05

Gerald J. O'Connor

Primary Examiner

Group Art Unit 3627